

**WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
COLEMAN OIL COMPANY  
TAZEWELL HAPPY MART**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and the Coleman Oil Company, for the purpose of resolving alleged violations of environmental law and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1.     **ACode@** means the Code of Virginia (1950), as amended.
2.     **“Board”** means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3.     **ADepartment@** or **ADEQ@** means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code ' 10.1-1183.
4.     **ADirector@** means the Director of the Department of Environmental Quality.
5.     **ASWRO@** means the Southwest Regional Office of the Department.
6.     **AOrder@** means this document, also known as a consent special order.
7.     **“UST”** means underground storage tank.

8. “Company” means the Coleman Oil Company with main offices in Pikeville, Kentucky.
9. “Facility” means the Tazewell Happy Mart.

### **SECTION C: Findings of Facts and Conclusions of Law**

1. The Company is the former owner of four (4) 10,000 gallon USTs and one (1) 6,000 gallon UST located at the Facility on Route 19/460 east of Tazewell, Virginia.
2. The Facility reported a suspected release in 1998 as a result of a Phase II assessment which included the installation of several monitoring wells to test for the potential of subsurface petroleum impact. Several of the monitoring wells showed dissolved phase contamination. However, no free product was encountered.
3. In August 2000, monitoring well #1 reported over one foot of free product listed as diesel fuel. In December 2000, wells #2 and #4 showed free product listed as a mixture of gasoline and diesel fuel. As a result of these reports, DEQ staff requested the Company to perform UST system tightness test on all four products (regular unleaded, plus, premium, and diesel fuel). Tightness tests were performed on May 7, 2001 and all systems passed except for the regular unleaded (RU) pipeline.
4. The Company inspected the RU line and repaired the flex hose and while doing this work discovered an electrical relay malfunction. The non-operable relay would not allow the RU fuel pump to shut off and thus the mechanical automatic line leak detector for the RU pipeline was not able to function. The electrical relay along with the pump’s functional element were replaced and a line tightness test performed on May 16, 2001 was successful.
5. DEQ also reviewed copies of the Company’s monthly leak detection analysis. The Company is using an approved statistical inventory reconciliation method (SIR) for monthly leak detection of both the tanks and the pipelines. DEQ staff alleged several discrepancies found in utilizing the SIR program as compared to the instructional manual for the software. Taking the daily inventories from the SIR reports for the RU system, DEQ staff analyzed the data using the inventory control method for leak detection and alleges that the system failed the monthly tests beginning in November 2000 and continuing through April 2001.
6. To date, the Company has performed all the requirements for corrective action and clean up of the petroleum release.
7. State Water Control Board Regulation 9 VAC 25-580-130 through –180 requires that owner

and operators of UST systems must provide a method or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product and is installed, calibrated, operated and maintained in accordance with manufacturer's instructions, including routine maintenance and service checks for the operability or running conditions.

8. Section 9 VAC 25-580-220 requires owners and operators of UST systems must contain and immediately clean up a spill and if greater than 25 gallons must report the release to the Board within 24 hours.
9. DEQ and the Company met on August 23, 2001 to resolve the alleged violation of failing to maintain proper release detection for UST systems.

#### **SECTION D: Agreement and Order**

The Company neither admits nor denies the violations alleged by the Board, but accepts responsibility for such alleged violations. Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.4-44.15 (8a) and (8d), orders the Company, and the Company agrees, to pay a civil charge of **\$5,600** within **30 days** of the effective date of the Order in settlement of the violations alleged in this Order. Payment shall be made by check or money order payable to the "Treasurer of Virginia", and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check or money order, the Company shall indicate that this payment is submitted pursuant to this Order and shall include the Company's Federal Identification Number.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Company, for good cause shown by the Company or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically alleged herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not

limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, the Company admits the jurisdictional allegations, factual findings, and conclusions of law contained herein. The Company neither admits nor denies the violations alleged by the Board, but accepts responsibility for such alleged violations.
4. The Company declares it has received fair and due process under the Administrative Process Act, Code ' 9-6.14:1 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of the Company to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order and the Company reserves its defenses to such actions that may be taken by the Board.
5. Failure by the Company to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Company shall notify the Director and the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or

- d. noncompliance; and  
the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify by phone the Director and the Director of the SWRO within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

- 8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 9. This Order shall become effective upon execution by both the Director or his designee and the Company. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.
- 10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 11. The Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
- 12. By its signature below, the Company voluntarily agrees to the issuance of this Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
Dennis Treacy, Director  
Department of Environmental Quality

Coleman Oil Company

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of Kentucky

City/County of \_\_\_\_\_

The foregoing instrument was signed and acknowledged before me this \_\_\_\_ day of

\_\_\_\_\_, 2001 by \_\_\_\_\_, who is \_\_\_\_\_ of  
(name) (title)

Coleman Oil Company on behalf of the Corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_